

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 CHRISTOPHER E. KRUEGER
Senior Assistant Attorney General
3 DOUGLAS J. WOODS
Supervising Deputy Attorney General
4 SUSAN K. LEACH, State Bar No. 231575
Deputy Attorney General
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-2105
Fax: (213) 897-1071
7 Email: Susan.Leach@doj.ca.gov

8 Attorneys for Ron Diedrich, in his official capacity as
Director and Chief Administrative Law Judge of the
9 State of California Office of Administrative Hearings

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 **C.S., by and through his Conservator,
14 MARY STRUBLE, on behalf of himself and
15 all others similarly situated,**

16 Plaintiff,

17 v.

18 **CALIFORNIA DEPARTMENT OF
EDUCATION, a State Agency,**

19 Defendant.

Case No.: 08 CV0226 W AJB

**REPLY BY RON DIEDRICH, IN HIS
OFFICIAL CAPACITY AS
DIRECTOR OF CHIEF
ADMINISTRATIVE LAW JUDGE OF
THE STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE
HEARINGS, IN SUPPORT OF
MOTION TO INTERVENE AS
DEFENDANT
[No Oral Argument Pursuant to Local
Rule]**

Hearing: April 6, 2008
Judge: The Honorable Thomas J. Whelan

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23 **INTRODUCTION**

24 Ron Diedrich, in his official capacity as Director and Chief Administrative Law Judge of the
25 State of California Office of Administrative Hearings ("OAH"), submits this reply in further
26 support of his motion to this Court for leave to intervene as a defendant in the above-captioned
27 matter so that he may defend OAH against the allegations in the complaint. This case is a class
28 action complaint seeking injunctive relief against the California Department of Education

1 (“CDE”) for alleged violations of the federal Individuals with Disabilities Education
 2 Improvement Act (“IDEIA”), the United States Constitution’s Supremacy Clause (Article VI,
 3 Section 2) and the Equal Protection Clause of the Fourteenth Amendment. Additionally, plaintiff
 4 seeks relief that includes a permanent injunction barring CDE from renewing or otherwise
 5 awarding a contract to OAH. The contract at issue is between OAH and CDE by which OAH
 6 provides administrative due process hearings to students with disabilities who request a hearing
 7 pursuant to the IDEIA. Plaintiff’s allegations are that OAH, in performing the administrative due
 8 process hearings, has violated the IDEIA and has harmed plaintiff and an undetermined class of
 9 additional plaintiffs.

10 Plaintiff’s opposition to the motion to intervention raises specious claims and proposes a
 11 “conditional intervention,” but does not dispute that OAH meets the elements for intervention
 12 pursuant to Rule 24 of the Federal Rules of Civil Procedure. Because OAH meets the elements
 13 for intervention, OAH should be allowed to intervene and defend and protect its contractual
 14 rights.^{1/}

15 ARGUMENT

16 I. PLAINTIFF DOES NOT DISPUTE THAT OAH MEETS THE ELEMENTS FOR 17 INTERVENTION PURSUANT TO RULE 24(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND THE MOTION SHOULD BE GRANTED.

18 OAH’s motion to intervene pursuant to Rule 24(a) of the Federal Rules of Civil Procedure
 19 should be granted because plaintiff does not dispute that the relevant elements have been met.
 20 Plaintiff argues that because CDE allegedly may award the contract to OAH that “CDE is
 21 obviously acting in concert with OAH to benefit OAH as much as possible.” See Plaintiff’s
 22 Memorandum of Points and Authorities in Opposition Motion to Intervene (“Opp. Br.”) at
 23 p.5:23-24. Additionally, plaintiff argues that because CDE is paying for its defense with public
 24 funds, there is “no need for OAH to spend public funds in a duplicative defense.” Opp. Br. at p.
 25

26 1. OAH incorporates the facts recited in the opening memorandum of points and authorities
 27 as fully stated herein. See Motion by Ron Diedrich, in his Official Capacity as Director and Chief
 28 Administrative Law Judge of the State of California Office of Administrative Hearings, To Intervene
 Defendant (“OAH Br.”) at pp. 2-3.

1 5:28. Neither of these arguments has anything do to with the elements of intervention as of right.

2 A party seeking to intervene as of right must meet four requirements: (1) the applicant must
3 timely move to intervene; (2) the applicant must have a significantly protectable interest relating
4 to the property or transaction that is the subject of the action; (3) the applicant must be situated
5 such that the disposition of the action may impair or impede the applicant's interest; and (4) the
6 applicant's interest must not be adequately represented by existing parties. Fed. R. Civ. P. 24(a);
7 *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *Donnelly v. Glickman*, 159 F.3d 405,
8 409 (9th Cir. 1998). Courts liberally construe Rule 24 of the Federal Rules of Civil Procedure in
9 favor of applicants for intervention. *Arakaki*, 324 F.3d at 1083; *United States of America v.*
10 *Oregon*, 745 F.2d 550, 552 (9th Cir. 1984); *Westlands Water Dist. v. United States of America*,
11 700 F.2d 561, 563 (9th Cir. 1983). Courts are guided primarily by practical and equitable
12 considerations. *Arakaki*, 324 F.3d at 1083. *See also* OAH Br. at pp. 4-6.

13 Plaintiff does not address these elements except to allege that CDE may be acting in concert
14 with OAH. To further this allegation, plaintiff improperly submitted e-mails attached to its
15 opposition to intervention without a declaration or affidavit and in violation of the federal rules.
16 But, assuming for the sake of argument that the e-mails were submitted properly, they show
17 nothing except exchanges between attorneys in this litigation. The e-mails do not represent facts
18 or evidence. Moreover, the e-mails do not show that OAH and CDE are acting in concert.

19 Additionally, plaintiff does not argue that OAH's motion for intervention was untimely, but
20 rather asserts that the motion is not "ripe." Plaintiff's circular argument seems to assert that
21 OAH's motion to intervene is hinged on "CDE's manner of response, and timeliness thereof" to
22 Plaintiff's complaint. Opp. Br. at 5:1-2. CDE's response to the complaint has no bearing on
23 OAH's intervention.^{2/} As pointed out in OAH's opening brief, OAH's interest would not be
24 adequately represented by the existing parties, including CDE. *See* OAH Br. at p. 4. The fact
25 that CDE is a party to the contract does not mean that OAH and CDE have identical interests.
26 Plaintiff acknowledged this in the complaint when it alleged that CDE did *not* want to contract
27

28 2. CDE subsequently filed an answer to the complaint on March 25, 2008.

1 with OAH in 2005. *See* Complaint ¶¶ 96-105. However, even assuming that plaintiff's
 2 allegation was wrong, CDE and OAH have different interests as parties contracting for and
 3 providing services, respectively. Thus, OAH needs to be a party in this case to adequately
 4 represent its own interests.

5 Moreover, most of the allegations in the Complaint are allegations against OAH or
 6 administrative judges working for OAH. *See* Complaint ¶¶ 7-9, 30, 34, 45-53, 54-68, 69-95, 96-
 7 105 (alleging that OAH failed to obtain the training required by the Contract, failed to meet the
 8 qualifications specified in the Contract and did not perform the hearings pursuant to applicable
 9 law; that OAH has misrepresented data provided to CDE with respect to the administration of
 10 mediations and due process hearings conducted by OAH; that administrative law judges
 11 employed by OAH violated the Contract by presiding over non-special education cases, failing to
 12 provide proper educational records to students and parents when requested, unlawfully delegating
 13 the decision regarding compensatory education to the school district, allowing unauthorized
 14 discovery in the due process proceedings and mishandling conflict of law analysis). OAH's
 15 interest in defending itself against these allegations are not identical to CDE's interests. These
 16 allegations are focused on conduct by OAH and administrative law judges employed by OAH,
 17 and granting the relief that plaintiff seeks would eliminate OAH's ability to contract with CDE.
 18 Thus, there is a relationship between the legally protected interest, OAH's right to contract with
 19 CDE, and plaintiff's claims. OAH has a significantly protectable contractual interest at stake in
 20 this action, and OAH should be allowed to intervene.^{3/}

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 24 3. Plaintiff proposes a "conditional" intervention whereby OAH would be allowed to
 25 intervene, but OAH would have to waive any defense of exhaustion of administrative remedies for
 26 any client represented by plaintiff's counsel (which could include completely unrelated actions
 27 against OAH) and would allow "Plaintiff's counsel [to] bring any IDEA actions during the pendency
 28 of this action in Federal Court, without exhausting through OAH, and the Court appoint the
 Magistrate Judge as Special Master to oversee the scope of discovery." *Opp. Br.* at p. 6:18-28.
 There is absolutely no basis in law or fact, and plaintiff cites none, for this "conditional" intervention
 and OAH cannot agree to such conditions in this case and unrelated matters.

1 **II. IN THE ALTERNATIVE, OAH SHOULD BE ALLOWED TO INTERVENE BY**
 2 **PERMISSION PURSUANT TO RULE 24(b) OF THE FEDERAL RULES OF CIVIL**
 3 **PROCEDURE.**

4 OAH filed a motion to intervene as a *defendant* and not a plaintiff in this matter. *See* OAH
 5 Br. at 1. OAH seeks intervention to defend its contractual rights, the same rights which plaintiff
 6 seeks to enjoin. Plaintiff asserts a right to enjoin those contractual rights pursuant to alleged
 7 violations of IDEIA and the federal Constitution and the asserted basis of jurisdiction is pursuant
 8 to 28 U.S.C. § 1331. Complaint at ¶ 1. Plaintiff's argument that OAH must establish
 9 "independent grounds for federal subject matter jurisdiction" is based on an erroneous reading of
 10 *Blake v. Pallan*, 554 F.2d 947, 955 (9th Cir. 1977). Opp. Br. at p. 6:3-16. In *Blake*, the party
 11 moving to intervene sought to do so as a plaintiff and the claims that party asserted were state
 12 law claims only. *Id.* at 951. The Court held that where the intervenor also seeks to add his own
 13 causes of action, jurisdictional grounds must be established for permissive intervention. *Id.* As
 14 OAH has not proposed adding claims as this point, and seeks to intervene as a defendant, this is
 15 an invalid argument.

16 For all the reasons stated in OAH's opening brief, fairness and judicial economy weigh
 17 heavily in favor of allowing OAH to intervene in this action.

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CONCLUSION

For all the reasons stated above and in OAH's opening brief, OAH respectfully requests that this Court allow it to intervene in this matter.

Dated: March 28, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

CHRISTOPHER E. KRUEGER
Senior Assistant Attorney General

DOUGLAS J. WOODS
Supervising Deputy Attorney General

\s\ Susan K. Leach
SUSAN K. LEACH
Deputy Attorney General
Attorneys for Ron Diedrich, in his official capacity as Director
and Chief Administrative Law Judge of the State of California
Office of Administrative Hearings

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